

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JANA L. GREENE</b>	)	
Claimant	)	
VS.	)	
	)	
<b>CHENEY GOLDEN AGE HOME, INC.</b>	)	Docket No. 1,013,384
Respondent	)	
AND	)	
	)	
<b>KS ASSOC. OF HOMES FOR THE AGING</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requests review of the August 5, 2004 preliminary hearing Order entered by Administrative Law Judge (ALJ) Nelsonna Potts Barnes.

**ISSUES**

Following the July 22, 2004, preliminary hearing, Judge Barnes denied claimant's request for preliminary benefits finding claimant failed to prove she suffered an accidental injury arising out of and in the course of her employment with respondent. Claimant appeals that finding and contends she contracted spinal meningitis as a result of her work place exposure to a patient who died from spinal meningitis.

Conversely, respondent argues that the ALJ's Order should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant was employed as a certified nurses aide (CNA) for respondent. In September of 2003 claimant had worked for respondent for approximately a year. In her capacity as a CNA claimant cared for a patient who became ill on September 13, 2003, and died the following day. It was later determined that the patient had meningococemia. Blood cultures identified the bacteria as Neisseria meningitidis.

Claimant testified that she had daily contact with the patient and performed routine care during the month of September. However, she admitted that before the patient

became ill she was able to perform tasks for herself including dressing, eating and using the restroom. The last day claimant worked before the patient became ill was September 12, 2003. Claimant recalled that she picked up kleenex in the patient's room.

On September 29, 2003, claimant became incoherent and was hospitalized at Kingman Hospital. The next day she was transferred to Via Christi St. Francis Hospital in Wichita. She underwent surgery to drain excess fluid from her brain cavity. She was diagnosed as having a bacterial meningitis infection. According to claimant, the patient at work was the only known contact she had with someone infected with meningitis. As a result of her illness, claimant has suffered permanent hearing loss and has difficulty with her memory.

The only expert witness to testify at the preliminary hearing was Larry Bentley, an infection control nurse for the Sedgwick County Health Department. Mr. Bentley is a licensed registered nurse. His job includes investigating reportable diseases in Sedgwick County. Meningitis is one of the diseases for which a report to the county health department is required. Mr. Bentley received the report of spinal meningitis concerning the patient at respondent's nursing home. This report came from Via Christi Medical Center where the patient had died. Mr. Bentley, however, said he received no report concerning claimant. This was probably due to the fact that before a hospital is required to report such an infection it must be confirmed by a laboratory test. In claimant's case her test results were negative.

The Via Christi medical records showed claimant had a diagnosis of H-flu meningitis. As stated above, this diagnosis was not confirmed by the laboratory testing. The patient to whom claimant was exposed had Nesseria meningitis. Mr. Bentley said it would be highly unlikely that an exposure to Nesseria meningitis would result in someone contracting H-flu meningitis. In addition, Mr. Bentley said that Nesseria meningitis is a communicable disease that is spread through respiratory secretions. Spread of the disease generally requires significant and intimate contact such as kissing, CPR, drinking from the same cup or eating from the same eating utensils. Mr. Bentley thought it unlikely that a person could contract this disease merely from picking up a kleenex containing respiratory mucus. Furthermore, a person who contracts Nesseria meningitis generally begins showing symptoms within three to four days of its contraction. Had claimant contracted meningitis from the patient at work she most likely would have begun showing serious symptoms within three to four days of September 12, 2003, which was the last day claimant was exposed to the patient, or sooner, had her contact with the patient resulted in claimant contracting the illness on an earlier date.

Although claimant had symptoms of leg and joint pain before September 29, 2003, the serious symptoms did not appear until September 29, 2003. This does not correspond with claimant having contracted Nesseria meningitis on or before September 12, 2003. In addition, the history reported to the emergency room physician at Kingman Hospital was that claimant had been experiencing an extremely painful period of approximately four to

five weeks before September 29, 2003. This would put claimant's symptoms as having begun before the ten-day incubation period of the nursing home patient.

The Workers Compensation Act places the burden of proof upon claimant to establish her right to an award of compensation and to prove the conditions on which that right depends.<sup>1</sup> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."<sup>2</sup>

An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment.<sup>3</sup> Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.<sup>4</sup>

Based upon the record presented to date, the Appeals Board finds that claimant has failed to prove by a preponderance of the credible evidence that she more likely than not contracted meningitis as a result of a work-related exposure.

As provided by the Workers Compensation, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>5</sup>

**WHEREFORE**, the August 5, 2004 preliminary hearing Order by Administrative Law Judge Nelsonna Potts Barns is affirmed.

**IT IS SO ORDERED.**

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<sup>1</sup> K.S.A. 44-510(a); *See also Chandler v. Central Oil Corp.*, 253 Kan. 50, 853 P.2d 649 (1993); *Box v. Cessna Aircraft Co.*, 236 Kan. 237, 689 P.2d 871 (1984).

<sup>2</sup> K.S.A. 44-508(g); *See in re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

<sup>3</sup> *Brobst v. Brighton Place North*, 24 Kan. App. 2d 766, 771, 955 P.2d 1315 (1997).

<sup>4</sup> *Springston v. IML Freight, Inc.*, 10 Kan. App. 2d 501, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).

<sup>5</sup> K.S.A. 44-534a(a)(2).

Dated this \_\_\_\_ day of November 2004.

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BOARD MEMBER

c: Joseph W. Seiwert, Attorney for Claimant  
Kirby A. Vernon, Attorney for Respondent  
Nelsonna Potts Barnes, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director